

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

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APR 1 1 2005

LUTELIN D. JOMAS, Clerk

By:

Deputy Clerk

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UPPER CHATTAHOOCHEE RIVERKEEPER FUND, INC.,))
Plaintiff,) CASE NO
v.	1 05-CV 95
JAMES DONALD, in his official capacity as Commissioner, Georgia Department of Corrections; ARNOLD SMITH, in his official capacity as Director of Operations, Planning and Training, Georgia Department)) COMPLAINT)
of Corrections; JOE FERRERO, in his official capacity as Assistant Commissioner Georgia Department of Corrections; CYNTHIA NELSON, in her official) JURY TRIAL DEMANDED
capacity as Superintendent, Larmore Probation Detention Center; GREG MULLIS, in his official capacity as Facility Contact for Larmore Probation Detention Center Construction Project, Georgia	APR 2 : 2005 OFFICE OF THE EXECUTIVE TO SETABLET
Department of Corrections; KIRK MAYS, in his official capacity as Chief Environmental Engineer, Georgia Department of Corrections; and DANNY ELIJAH, in his official capacity with Georgia Department of Corrections,)
Defendants.))

COMPLAINT

COMES NOW, the Upper Chattahoochee Riverkeeper (hereinafter "UCR"), Plaintiff in the above-styled action, and submits the following Complaint, showing the Court as follows:

INTRODUCTION

1.

This is a citizen suit brought pursuant to Section 505 of the Federal Water Pollution Control Act (commonly known as the Clean Water Act), 33 U.S.C. § 1365, et seq. Defendants' actions have directly resulted in the ongoing and continuous discharge of pollutants into waters of the United States in violation of Section 301 of the Clean Water Act ("CWA"), 33 U.S.C. § 1311, and in violation of the conditions of its National Pollution Discharge Elimination System ("NPDES") permit No. GAR 100003 issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, for the discharge of pollutants with stormwater from construction activity in the State of Georgia. In addition, Defendants have discharged and continue to discharge fill material into waters of the United States without a permit in violation of Section 404 of the CWA, 33 U.S.C. § 1344.

Plaintiff seeks a declaratory judgment, injunctive relief, and the award of costs, including attorney and expert witness fees. Defendants' unpermitted discharges are in violation of an "effluent standard or limitation" under Section 505(a)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(a)(1)(A).

JURISDICTION AND VENUE

3.

This Court has subject matter jurisdiction over the claims specified in this Complaint pursuant to 33 U.S.C. § 1365(a)(1), and 28 U.S.C. § 1331. The relief requested is authorized pursuant to 33 U.S.C. §§ 1319 and 1365(a), and §§ 2201 and 2202.

4.

On or about December 20, 2004, Plaintiff, through counsel, gave notice of the Clean Water Act violations specified in this complaint and of its intent to file suit to the Administrator of the U.S. Environmental Protection Agency ("EPA"), to the Regional Administrator of the EPA, to the Director of Georgia's Environmental Protection Division ("EPD"), and to Defendants, as required by Section 505(b)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(b)(1)(A). A true and correct copy of the

notice letter is attached hereto as Exhibit A. The allegations in Exhibit A are incorporated herein by reference.

5.

More than sixty days have passed since notice was served, and the Clean Water Act violations complained of in the notice letter are continuing at this time or are reasonably likely to continue. Neither EPA nor EPD has commenced or is diligently prosecuting a civil or criminal action to redress these violations.

6.

Venue is appropriate in the Northern District of Georgia pursuant to Section 505(c)(1) and N.D. Ga. LR 3.1 because the source of the violations is located in Fulton County in the Northern District of Georgia.

7.

Pursuant to 28 U.S.C. § 1331, this Court's original jurisdiction is invoked because the claims asserted herein are founded upon the existence of federal questions arising under laws of the United States.

8.

There are no pending actions that defeat this Court's subject matter jurisdiction.

PLAINTIFF

9.

Plaintiff UCR is located at 3 Puritan Mill, 916 Joseph Lowery Drive N.W., Atlanta, Georgia 30318.

10.

UCR was established in 1994, as an independent environmental organization that actively uses advocacy, education, research, communication, cooperation, monitoring and legal actions to protect and preserve the Chattahoochee River and its watershed. UCR's mission is to advocate and secure the protection and stewardship of the Chattahoochee River, its tributaries and watershed, in order to restore and conserve their ecological health for the people, fish and wildlife that depend on the river system.

11.

Plaintiff has standing in this suit to protect its interests. Plaintiff's interests are adversely affected by Defendants' discharges into waters of the State and the U.S. which degrade such waters as fish and wildlife habitat, recreational resources and sources of aesthetic benefits.

This suit involves discharges that have occurred at, and adjacent to, the J.C. Larmore Probation Detention Center Expansion in College Park, Georgia ("Larmore Expansion"). These discharges have caused, and continue to cause damage as the sediment-laden runoff reaches the adjacent wetlands, the Valley Lakes, Deep Creek and ultimately, the Chattahoochee River.

13.

UCR has over 2,700 members who reside in, and recreate throughout the Chattahoochee River watershed, including members who reside in the Valley Lakes subdivision directly adjacent to the Larmore Expansion where Valley Lakes, Deep Creek and other waters impacted by Defendants' illegal discharges are located.

14.

Plaintiff and its members use, enjoy, and recreate along the waters of the adjacent wetlands, the Valley Lakes, Deep Creek and ultimately, the Chattahoochee River. Plaintiff and its members have recreational, aesthetic and economic interests that have been, are being, and will be adversely impacted by Defendants' unpermitted discharges.

DEFENDANTS

15.

Defendants, in their official capacities, own, operate and/or are otherwise responsible for the construction activities at Larmore Expansion. Accordingly, Defendants are responsible for violations of state and federal law at the Larmore Expansion.

16.

Defendant James Donald is the Commissioner of Georgia Department of Corrections ("GDOC"). In his official capacity as Commissioner of the GDOC, Defendant Donald has the responsibility to ensure that GDOC acts in accordance with applicable laws and regulations.

17.

Defendant Joe Ferrero is the Assistant Commissioner for the GDOC. In his official capacity as Assistant Commissioner for the GDOC, Defendant Ferrero is responsible for the overall administration and operation of the agency as directed by the Commissioner or in the Commissioner's absence.

18.

Defendant Arnold Smith is the Director of Operations, Planning and Training for the GDOC. In his official capacity as Director, Defendant Smith is responsible

for managing the operations of Planning, Training, Risk Reduction Services, Engineering, Information Technology, Health Services, Fire Services, the Communications Center, and the departmental Safety Office.

19.

Defendant Cynthia Nelson is the Superintendent of Larmore Probation

Detention Center. In her official capacity as Superintendent, Defendant Nelson is
responsible for the effective direction and management of all personnel and activities
at the Larmore Probation Detention Center, and ensuring compliance with all
applicable rules, regulations, policies, procedures and directives.

20.

Defendant Greg Mullis is the Site Superintendent for the GDOC at the Larmore Expansion. In his official capacity as Site Superintendent, Defendant Mullis is responsible for directing and coordinating various workgroups and activities at the site, including ensuring that the work progresses on schedule, managing delivery of materials and equipment to the site, and preventing interference between various workgroups.

21.

Defendant Kirk Mays is the Chief Environmental Engineer for the GDOC. In his official capacity as Chief Environmental Engineer, Defendant Mays is

responsible for managing the design and construction of GDOC projects, including management of site personnel, implementation of site plans, contracts and agreements.

22.

Defendant Danny Elijah, in his official capacity with the GDOC, is responsible for compliance with NPDES stormwater permit requirements at the Larmore Expansion.

23.

Each Defendant is a "person" as defined in Section 502(5) of the Clean Water Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.

STATEMENT OF FACTS

24.

The Chattahoochee River begins in the north Georgia mountains at a spring on Coon Den Ridge in southeastern Union County. The headwaters of the Chattahoochee River above Atlanta comprise the smallest watershed, or drainage area, which provides a major portion of water supply for any metropolitan area in the country. The Chattahoochee River supplies 70% of metro Atlanta's drinking water. It is also used for industrial supply, irrigation, power generation, navigation and recreation and is considered to be the most heavily-used water resource in Georgia.

The Chattahoochee River is the southernmost habitat in the United States for trout. The state of Georgia stocks Rainbow, Brook, and Brown trout in the River. The Chattahoochee River flows southwesterly 436 miles to the Florida border, defining the state boundaries between Georgia and Alabama near West Point Lake. At Lake Seminole on the Florida border, the Chattahoochee River is joined by the Flint River and becomes the Apalachicola River in Florida, flowing 106 miles to Apalachicola Bay, where it empties 16 billion gallons of fresh water per day. The Apalachicola-Chattahoochee-Flint (ACF) River Basin drains approximately 19,800 square miles in the Blue Ridge, Piedmont and Coastal Plain Provinces. The Chattahoochee River alone drains 8,770 square miles.

26.

The Larmore Expansion is located within the Chattahoochee River watershed and is bordered by wetlands and the Valley Lakes community located off of High Point Road. Defendants have discharged and continue to discharge sediment, stormwater runoff and fill material from point sources into the adjacent wetlands, which drain directly into additional wetlands, Valley Lakes, Deep Creek, and ultimately, the Chattahoochee River.

Discharges associated with construction activities, including clearing, grading, and excavation of at least one acre require a stormwater discharge permit under the Clean Water Act's National Pollutant Discharge Elimination System ("NPDES"). 40 C.F.R. §§ 22.26(b)(14)(x); 122.26(b)(15); 33 U.S. C. §§ 1311, 1342. The activities associated with the construction at the Larmore Expansion involve clearing, grading, and excavation of more than one acre. Defendants have created conduits for stormwater, sediment, and other pollutants to reach the waters of the State and waters of the United States. The stormwater runoff from the Larmore Expansion delivers harmful dirt, sediment, silt, debris, and other pollutants from point sources into State and U.S. waters.

28.

In Georgia, stormwater discharges associated with construction activities are regulated by a general permit. The permit, "Georgia Environmental Protection Division Authorization to Discharge under the NPDES, Storm Water Discharges Associated With Construction Activity for Common Developments, General Permit No. GAR 100003," became effective as of August 13, 2003 (hereinafter referred to as the "General Permit"). Defendants have not complied with the terms of the General Permit. As the "Primary Permittees," Defendants have continuing liability for

Defendants failed to properly design, install, and maintain BMPs for erosion and sedimentation control at the Larmore Expansion.

34.

Defendants' Erosion and Sedimentation Pollution Control Plan ("ESPCP") for the Larmore Expansion is insufficient to protect water quality and fails to meet legal requirements. Specifically, the ESPCP fails to: (1) identify and delineate waters of the U.S. and waters of the State resulting in the clearing of stream buffers and the discharge of sediment into State and U.S. waters; (2) adequately design detention and sediment basins; (3) adequately protect adjacent wetlands, which has resulted in the discharge of sediment into State and U.S. waters; (4) include BMPs, including sound conservation and engineering practices, consistent with the Manual for Erosion and Sediment Control in Georgia, that would prevent and minimize erosion and resulting sedimentation from reaching State and U.S. waters; and (5) address the need for phased erosion and sediment control.

35.

In addition, while conducting construction activities at the Larmore Expansion,
Defendants have failed, and continue to fail, to: (1) adequately maintain sediment

barriers; (2) install sediment basins pursuant to an Erosion and Sedimentation Pollution Control Plan that meets legal requirements; (3) protect stream buffers; (4) obtain required permits for the placement of sediment traps and basins in State and U.S. waters; (5) maintain storm drain outlet protection; (6) retain, protect and supplement vegetation; (7) prevent the discharge of sediment and fill into State and U.S. waters; and (8) obtain a buffer variance and a permit to pipe an intermittent stream.

36.

Defendants' failure to properly design, install and maintain BMPs for erosion and sedimentation control has caused, and continues to cause, discharges of sediment-laden stormwater to flow into waters of the U.S., which have caused, and continue to cause, violations of Georgia's water quality standards, including the following: (a) Ga. Comp. R. & Regs. 391-3-6-.03(5)(b), which states that "[a]II waters shall be free from ... floating debris ... in amounts sufficient to be unsightly or to interfere with legitimate water uses;" (b) Ga. Comp. R. & Regs. 391-3-6-.03(5)(c), which states that "[a]II waters shall be free from material ... which produce turbidity, color, odor or other objectionable conditions which interfere with legitimate water uses;" (c) Ga. Comp. R. & Regs. 391-3-6-.03(5)(d), which states that "[a]II waters shall be free from turbidity which results in a substantial visual contrast in a water

body due to man-made activity;" and (4) Ga. Comp. R. & Regs. 391-3-6-.03(2)(b) and 40 C.F.R. § 131.12(a)(1), which state that "[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected."

37.

Defendants have failed to monitor and report following qualifying events designated in the General Permit.

38.

Defendants' activities at the Larmore Expansion have directly resulted in the discharge of fill into wetlands subject to the jurisdiction of the United States.

Defendants have not obtained a permit under Section 404 of the Clean Water Act (dredge and fill permit) or any other state or federal permits that would allow such activities.

39.

Valley Lakes, Deep Creek and the Chattahoochee River are "waters of the United States" under the CWA. The wetlands filled by Defendants constitute "waters of the United States under the CWA.

Valley Lakes, Deep Creek and the Chattahoochee River are "waters of the state" as that term is defined in Section 12-5-22(13) of the Georgia Code. O.C.G.A. § 12-5-22(13). The wetlands filled by Defendants are "waters of the state" as that term is defined by in Section 12-5-22(13) of the Georgia Code. O.C.G.A. § 12-5-22(13).

41.

The sediment, debris and fill material discharged by Defendants via stormwater runoff meet the definition of "pollutants" as that term is defined in Section 502(6) of the CWA, 33 U.S.C. § 1362.

42.

Stormwater runoff from a construction site constitutes a "point source" as that term is defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

43.

Defendants are responsible for the aforementioned discharges.

44.

In light of Defendants' violation of the General Permit and the absence of a dredge and fill permit, Plaintiff believes and alleges that, without the imposition of an appropriate injunction, Defendants will continue to violate the CWA to the further injury of Plaintiff and others. Plaintiff intends to amend this complaint to include any

previously undiscovered violations and/or violations that may occur subsequent to the filing of this complaint.

45.

All of Defendants' aforementioned discharges to waters are discharges from point sources into waters of the United States and the State of Georgia within the meaning of Section 301 of the CWA, and O.C.G.A § 12-5-22(13).

COUNT ONE

Violations of the Clean Water Act Section 402

46.

Paragraphs 1 through 45 above are herein incorporated by reference as if rewritten in their entirety.

47.

Defendants violated and continue to violate the Clean Water Act by discharging pollutants in violation of the NPDES permit.

48.

Defendants are strictly liable for violating, and continuing to violate, the discharge limitations contained in the NPDES Permit pursuant to Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a).

Said violations have significant detrimental effects on the quality of waters of the State and the United States into which they flow.

50.

Said violations have caused UCR to be injured in fact and such injuries are traceable to Defendants and redressable by this lawsuit.

51.

The aforementioned violations have occurred on *each and every day* since commencement of construction in February 2004, including, but not limited to the following days: April 24, 2004; May 13, 2004; May 19, 2004; May 24, 2004; June 2, 2004; June 15, 2004; August 12, 2004; September 16, 2004; October 25, 2004; November 2, 2004; November 3, 2004; November 4, 2004; November 8, 2004; November 9, 2004; Nobember 11, 2004; November 23, 2004; December 7, 2004; December 8, 2004; December 10, 2004; December 23, 204; December 27, 2004; December 29, 2004; January 3, 2005; January 11, 2004; February 8, 2005; February 10, 2005; February 22, 2005; February 28, 2005; March 1, 2005; March 4, 2005; March 9, 2005; March 16, 2005; March 21, 2005; and, April 1, 2005.

These violations have been continuous and ongoing and there is a reasonable likelihood that Defendants will continue to violate the NPDES permit in the future.

COUNT TWO

Violation of Clean Water Act Section 404

53.

Paragraphs 1 through 52 above are herein incorporated by reference as if rewritten in their entirety.

54.

Section 404 of the Clean Water Act prohibits the discharge of dredged or fill material into waters of the United States without a permit from the U.S. Army Corps of Engineers or in violation of a permit from the Corps of Engineers. 33 U.S.C. § 1344; 33 C.F.R. § 323.2(e)(1); 40 C.F.R. § 232.2. The continued presence of illegally discharged fill materials in the waters of the U.S. constitutes continuing violations of the Clean Water Act.

55.

A discharger of fill material into waters of the United States can either obtain an individual Section 404 permit or comply with the terms of an applicable Nationwide Permit("NWP"), which is a type of "general" permit.

Defendants failed to apply for, or obtain, any permit for the discharge of fill material or comply with the terms of any NWP. As such, Defendants have discharged fill materials into waters of the U.S. without a permit in violation of the Clean Water Act. 33 U.S.C. § 1344.

57.

The aforementioned violations have occurred on each and every day since commencement of construction in February 2004.

58.

Said violations have caused UCR to be injured in fact and such injuries are traceable to Defendants and redressable by this lawsuit.

59.

These violations have been continuous and ongoing and there is a reasonable likelihood that the violations will continue.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests:

- (1) A declaration that Defendants have illegally discharged pollutants into waters of the state and the U.S. in violation of the Clean Water Act;
- (2) Preliminary and permanent injunctions requiring Defendants to take all steps necessary to prevent further violations of the Clean Water Act, including, but not limited to:
 - (a) enjoining any further violations of the CWA by Defendants, including the discharge of the above-described pollutants and all other excess pollutants into waters of the United States;
 - (b) ordering Defendants to immediately change practices and conditions at the Larmore Expansion so as to cease discharging the above-described pollutants and all other excess pollutants and to cease any and all violations of the CWA and all applicable state laws;
 - (c) ordering Defendants to restore the biological and ecological integrity of the area impacted by discharge; and/or
 - (d) ordering that all future operation of the facility be carried out in strict compliance with this Court's orders and all applicable laws.

- (3) An order awarding Plaintiff its costs of litigation, including reasonable attorneys' fees, expert fees, and other costs, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d); and
- (4) Such other and further relief as is just and appropriate.

Respectfully submitted this 11th day of April, 2005.

Justine Thompson GA Bar No. 708705 Jennifer Pennington GA Bar No. 571398 Georgia Center for Law in the Public Interest 175 Trinity Avenue, SW Atlanta, Georgia 30303 (494) 659-3122

EXHIBIT A



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December 20, 2004

Via Certified Mail, Return Receipt Requested

James Donald Commissioner, Department of Corrections Georgia Department of Corrections East Tower, Room 758 2 Martin Luther King, Jr. Drive, NE Atlanta, Georgia 30334

Arnold Smith Operations, Planning and Training Georgia Department of Corrections East Tower, Room 758 2 Martin Luther King, Jr. Drive, NE Atlanta, Georgia 30334

Joe Ferrero
Assistant Commissioner
Department of Corrections
Georgia Department of Corrections
East Tower, Room 758
2 Martin Luther King, Jr. Drive, NE
Atlanta, Georgia 30334

Cynthia Nelson Superintendent Larmore Probation Detention Center P.O. Box 491419 College Park, Georgia, 30349

Greg Mullis
Facility Contact for
Larmore Probation Detention Center Construction Project
Georgia Department of Corrections
East Tower, Room 758
2 Martin Luther King, Jr. Drive, NE
Atlanta, Georgia 30334

Kirk Mays Chief Environmental Engineer Georgia Department of Corrections East Tower, Room 758 2 Martin Luther King, Jr. Drive, NE Atlanta, Georgia 30334

Danny Elijah Georgia Department of Corrections P.O. Box 17765 East Confederate, Building 5 Atlanta, Georgia 30316

> Re: Notice of Intent to Sue for Violations of the Clean Water Act at the J.C. Larmore Probation Detention Center Expansion in College Park, Georgia

Dear Ladies and Gentlemen:

Pursuant to 33 U.S.C. § 1365(b), Upper Chattahoochee Riverkeeper (hereinafter "UCR") hereby gives notice of its intent to sue James Donald, Commissioner, Department of Corrections, in his official capacity, Joe Ferrero, Assistant Commissioner, Department of Corrections, in his official capacity, Arnold Smith, Director, Operations, Planning and Training, Georgia Department of Corrections, in his official capacity, Cynthia Nelson, Superintendent of Larmore Probation Detention Center, in her official capacity, Greg Mullis, in his official capacity, Kirk Mays, in his official capacity, and Danny Elijah, in his official capacity (collectively refereed to herein as "DOC Officials") for violations of the Clean Water Act. These violations are related to discharges of sediment, stormwater run off, and fill material into waters of the United States from the J.C. Larmore Probation Detention Center Expansion located on Camp Road, west of the intersection of Camp Road and Stonewall-Tell Road, in College Park, Fulton County.

UCR is located at 3 Puritan Mill, 916 Joseph Lowery Drive N.W., Atlanta, Georgia, 30318, (404) 352-9828. However, please direct all communication regarding this matter to the undersigned counsel.

The J.C. Larmore Probation Detention Center Expansion ("Larmore") is bordered by wetlands and the Valley Lakes community located off High Point Road. The wetlands are directly adjacent to Larmore and then drain directly into additional wetlands, Valley Lakes, Deep Creek and ultimately the Chattahoochee River. The adjacent wetlands are receiving fill directly from sediment-laden water running off of the Larmore property.

By letter dated November 10, 2004, addressed to the Commissioner of the Department of Corrections, UCR notified you of the problems at this facility. Since that date, there has been no attempt to remedy the violations and, the violations have continued.

The Erosion, Sedimentation and Pollution Control Plan ("Plan") for the site is insufficient to protect water quality and fails to meet clear legal requirements as follows:

- The Plan fails to identify and delineate waters of the U.S. and waters of the State allowing the clearing of stream buffers and the discharge of sediment into State and U.S. waters;
- The Plan fails to adequately design detention and sediment basins;
- The failure to identify and delineate all State and U.S. waters has led to the fill and destruction of waters of the U.S. and the State;
- The Plan failed to adequately protect adjacent wetlands, which has allowed discharge of sediment into State and U.S. waters;
- The Plan fails to include "best management practices", including sound conservation and engineering practices, consistent with the Manual for Erosion and Sediment Control in Georgia, that would prevent and minimize erosion and resulting sedimentation from reaching State and U.S. waters; and
- The Plan does not address the need for phased erosion and sediment control.

Additional on-site violations include but are not limited to:

- Failure to adequately maintain sediment barriers;
- Approval of retrofits for the sediment/detention basin within intermittent streams without proper permits;
- Failure to install sediment basins per the Plan;
- Failure to protect stream buffers;
- Placement of sediment traps and basins in State and U.S. waters without appropriate permits;
- Failure of storm drain outlet protection;
- Failure to retain, protect and supplement vegetation;
- Failure to stabilize the site as quickly as practicable;
- Discharge of sediment and fill into State and U.S. waters;
- Piping of an intermittent stream without a permit; and
- Buffer encroachment violations associated with the piping of the stream.

The activities set forth in this letter violate Section 301, Section 402, and Section 404 of the Clean Water Act, 33 U.S.C. §§ 1311, 1342, and 1344. Section 301 of the Clean Water Act prohibits the discharge of pollutants into waters of the United States, except as otherwise expressly authorized by the Act.

Section 402 of the Clean Water Act prohibits the discharge of pollutants from a point source

into waters of the United States without a National Pollutant Discharge Elimination System ("NPDES") permit or in violation of a NPDES permit. The pollutant-laden stormwater from Larmore flows into State and U.S. waters located on site as well as bordering waters including Valley Lakes all of which enter Deep Creek and then the Chattahoochee River. Accordingly, the affected water bodies are waters of the United States subject to the Clean Water Act.

Discharges associated with construction and industrial activities, including clearing, grading, and excavation of at least one acre require a storm water discharge permit under the Clean Water Act's National Pollutant Discharge Elimination System. 40 C.F.R. §§ 22.26(b)(14)(x); 122.26(b)(15); 33 U.S. C. §§ 1311, 1342. The activities associated with the construction of Larmore involve clearing, grading, and excavation of more than one acre. DOC Officials have created conduits for storm water, sediment, and other pollutants to reach the waters of the United States. The storm water runoff from Larmore delivers harmful dirt, sediment, silt, debris, and other pollutants to State and U.S. waters. However, DOC officials have not complied with the Clean Water Act permit that regulates these discharges.

In Georgia, stormwater discharges associated with such construction activities are regulated by a general permit. The permit, "Georgia Environmental Protection Division Authorization to Discharge under the NPDES, Storm Water Discharges Associated With Construction Activity for Common Developments, General Permit No. GAR 100003," became effective as of August 13, 2003 (hereinafter referred to as the "General Permit"). DOC Officials have not complied with the terms of the General Permit. As the "Primary Permittees," DOC Officials have continuing liability for violations of the General Permit unless and until a Notice of Termination is submitted to EPD. GAR 100003, Part(I)(E).

The General Permit specifies that "best management practices" ("BMPs"), to prevent or reduce pollution, must be properly implemented for all construction activities. GAR 100003, Part III(C)(1)&(2). The General Permit specifies that discharges shall not cause violations of water quality standards. GAR 100003, Part I(C)(4). However, the DOC Officials failed to properly design, install, and maintain BMPs for erosion and sedimentation control. Indeed, this failure to maintain BMPs has caused and continues to cause discharges of sediment-laden stormwater to flow into waters of the U.S., and has caused and continues to cause violations of Georgia's water quality standards, including the following standards:

Ga. Comp. R. & Regs. 391-3-6-.03(5)(b), which states that "[a]ll waters shall be free from ... floating debris ... in amounts sufficient to be unsightly or to interfere with legitimate water uses";

Ga. Comp. R. & Regs. 391-3-6-.03(5)(c), which states that "[a]ll waters shall be free from material ... which produce turbidity, color, odor or other objectionable conditions which interfere with legitimate water uses";

Ga. Comp. R. & Regs. 391-3-6-.03(5)(d), which states that "[a]ll waters shall be free from turbidity which results in a substantial visual contrast in a water body due to

man-made activity"; and

Ga. Comp. R. & Regs. 391-3-6-.03(2)(b) and 40 C.F.R. § 131.12(a)(1), which state that "[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected."

DOC Officials have not taken all reasonable steps to minimize or prevent discharges in violation of the General Permit, which have a reasonable likelihood of adversely affecting the environment. GAR 100003, Part V(D). Where best management practices have not been properly designed, installed, and maintained, it is a violation of the General Permit for each day that those BMPs are not properly designed, installed, and maintained. In addition, when BMPs are not properly designed, installed, or maintained, a second violation accrues for each day that discharges increase turbidity by more than 25 nephelometric turbidity units. GAR 100003, Part III(C)(3). The general permit further requires an Erosion, Sedimentation and Pollution Control Plan ("Plan") which shall include, at a minimum, best management practices, including sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation, which are consistent with the Manual for Erosion and Sediment Control in Georgia. GAR 100003, Part IV. The Plan must include provisions to retain sediments on site and preclude sedimentation of adjacent waters. GAR 100003, Part IV. However, DOC Officials have not prepared an adequate Plan and have not complied with the terms of its Plan.

The General Permit also requires monitoring and reporting following qualifying events. GAR 100003, Part IV (D)(5) & (E). To date, monitoring and/or reporting has not occurred after all qualifying events.

The aforementioned violations have occurred on each and every day since commencement of construction in February 2004 and have also occurred on October 25, 2004, November 9, 2004, November 11, 2004, November 29, 2004, and December 3, 2004. In addition, since the commencement of construction of the Larmore expansion, sediment has been discharged into State and U.S. waters during each rain event.

Section 404 of the Clean Water Act prohibits the discharge of dredged or fill material into waters of the United States without a permit from the U.S. Army Corps of Engineers or in violation of a permit from the Corps of Engineers. 33 U.S.C. § 1344; 33 C.F.R. § 323.2(e)(1); 40 C.F.R. § 232.2. The continued presence of illegally discharged fill materials in the waters of the U.S. constitutes continuing violations of the Clean Water Act. As of June 10, 2002, the Corps defines fill as "material [that] has the effect of ... changing the bottom elevation of any portion of a water of the United States." 33 C.F.R. § 323.2(e). The Environmental Protection Agency has historically used this definition of fill. 40 C.F.R. § 232.2. The activities of DOC Officials have violated this provision.

A discharger of fill material into waters of the United States can either obtain an individual Section 404 permit or comply with the terms of an applicable Nationwide Permit("NWP"),

which is a type of "general" permit. DOC Officials failed to apply for or obtain any permit for the discharge of fill material or comply with the terms of any NWP. DOC Officials have discharged fill materials into waters of the U.S. without a permit.

Further, no land disturbing activities shall be conducted within the 25 foot buffer along the banks of all state waters unless otherwise provided by law. GAR 100003 Part IV(i). DOC Officials have cleared in the 25 foot, legally protected buffers without qualifying for any exceptions from the buffer protection requirement.

These activities are ongoing and continue to cause violations of General Permit No. GAR 100003 and other laws and regulations listed herein. The activities described in this letter have been ongoing and continuous since February 2004. As such, through this notice, we specifically allege that the violations have been and continue to occur each and every day since February 2004.

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that sixty days prior to filing a civil suit for violations of the Clean Water Act, a plaintiff must give notice of intent to sue. If the violations set forth herein are not remedied within sixty days, UCR will file a Clean Water Act claim against DOC Officials as described above. Such a lawsuit would include a request for the Court to:

- enjoin further violations;
- require the remediation of the pollution; and
- award compensation for attorneys' fees and other litigation expenses.

If you have reason to believe that your facility is exempt from the requirements of the statutes, permits, and regulations, has complied with all such statutes, permits, and regulations, or otherwise has a defense to liability, please advise us of the specific basis for your exemption, compliance, or defense.

During the 60-day notice period, we will be available to discuss effective remedies and actions and the possibility of resolving this matter without litigation, as well as any facts you believe are incorrectly set forth in this notice letter and other relevant facts not itemized above. Please feel free to contact Justine Thompson of the Georgia Center for Law in the Public Interest at (404) 659-3122 to discuss this matter further.

Thank you for your time and consideration in this important matter.

Sincerely,

Justine Thompson
Executive Director

Jennifer Pennington

Staff Attorney

Cc: Sally Bethea, Executive Director, Upper Chattahoochee Riverkeeper

Michael O. Leavitt, Administrator, U.S. E.P.A. - Via Certified Mail, Return Receipt Jimmy Palmer, Jr., Regional Administrator, U.S. E.P.A., Region IV - Via Certified Mail, Return Receipt

Carol Couch, Director, Georgia EPD - Via Certified Mail, Return Receipt

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

UPPER CHATTAHOOCHEE)
RIVERKEEPER FUND, INC.,)
Plaintiff,) CASE NO. 1 05-CV 955
v.)
JAMES DONALD, in his official capacity as Commissioner, Georgia Department of Corrections; ARNOLD SMITH, in his))) CERTIFICATE OF SERVICE
official capacity as Director of Operations,)
Planning and Training, Georgia Department of Corrections; JOE FERRERO, in his)
official capacity as Assistant Commissioner,	<i>)</i> }
Georgia Department of Corrections;))
CYNTHIA NELSON, in her official)
capacity as Superintendent, Larmore)
Probation Detention Center; GREG	
MULLIS, in his official capacity as Facility	
Contact for Larmore Probation Detention	
Center Construction Project, Georgia	
Department of Corrections; KIRK MAYS,	
in his official capacity as Chief	
Environmental Engineer, Georgia	
Department of Corrections; and	
DANNY ELIJAH, in his official capacity	,
with Georgia Department of Corrections,)
Defendants.	
2 ozoramino.	,)

Greg Mullis
Facility Contact for
Larmore Probation Detention Center Construction Project
Georgia Department of Corrections
East Tower, Room 758
2 Martin Luther King, Jr. Drive, NE
Atlanta, Georgia 30334

Kirk Mays Chief Environmental Engineer Georgia Department of Corrections East Tower, Room 758 2 Martin Luther King, Jr. Drive, NE Atlanta, Georgia 30334

Danny Elijah Georgia Department of Corrections P.O. Box 17765 East Confederate, Building 5 Atlanta, Georgia 30316

Attorney General Alberto Gonzales United States Department of Justice 950 Pennsylvania Avenue, NW Washington, DC 20530-0001

Acting Administrator Stephen L. Johnson U.S. Environmental Protection Agency 1102A
Ariel Rios Building 1200 Pennsylvania Avenue, NW Washington, DC 20460

Regional Administrator Jimmy Palmer U.S. Environmental Protection Agency Region 4 Sam Nunn Atlanta Federal Center 61 Forsyth Street, SW Atlanta, GA 30303-3104

Jennifer Pennington

	UNITED S	TATES DISTR	ICT CC	DURT	
N	ORTHERN	District of	GE	ORGIA ATLANTA	DIVISION
FUND, INC. JAMES DONALD, in his offici Corrections; ARNOLD SMITH Planning and Training, Georgia official capacity as Assistant Co CYNTHIA NELSON, in her off Probation Detention Center; GF Contract for Larmore Probation	Plaintiff V. al capacity as Commissioner, Georgia in his official capacity as Director of Department of Corrections; JOE FER minissioner, Georgia Department of Cicial capacity as Superintendent, Larm EG MULLIS, in his official capacity as Detention Center Construction Project	Department of Operations, RERO, in his Corrections: CASE NUmore as Facility , Georgia	MBER:	ns in a civil	ACTION 955
Environmental Engineer, Georgin bis official capacity with Geo	K MAYS, in his official capacity as C ia Department of Corrections; and DA rgia Department of Corrections, Defendants.	.niei NNY ELIJAH,	-		
	JAMES DONALD Commissioner, Dept. of Co Georgia Dept. of Correction East Tower, Room 758 2 Martin Luther King, Jr. D Atlanta, Georgia 30334	ns			
YOU ARE	HEREBY SUMMONED an JustineThompson, Esq. Georgia Center for Law in 175 Trinity Avenue SW Atlanta, Georgia 3033		PLAINTIFF	F'S ATTORNEY (1	name and address)
of this summons on for the relief demar	nplaint which is served on y you, exclusive of the day of ded in the complaint. Any within a reasonable period o	service. If you fail to d answer that you serve	o so, judgn	20 nent by default wil ties to this action i	days after service II be taken against you must be filed with the
· 2	UTHER D. TROMAG	ĀPR 112	TTR		

DATE

(By) DEPUTY CLERK

CLERK

SAO 440 (Rev. 8/01) Summons in a Civil Action

	R	ETURN OF SERVI	CE		
Service of the Summons and compla	aint was made by me(1)	DATE			
NAME OF SERVER (PRINT)		TITLE	•		
Check one box below to indicat	te appropriate method	of service			
☐ Served personally upon					
☐ Left copies thereof at the discretion then residing	e defendant's dwelling therein.	house or usual place of a	bode with a person of s	suitable age and	
Name of person with wh	om the summons and c	complaint were left:			
☐ Returned unexecuted:					
☐ Other (specify):					
	STATI	EMENT OF SERVICE	E FEES		
RAVEL	SERVICES			TOTAL \$0.00	
	DEC	LARATION OF SER	VER	Ψ0.00	
contained in the Return of S Executed on		ature of Server			
		·			
	Addr	ess of Server			